

**REMARKS**

Claims 1-19 are currently pending in this application. Claims 1-6, 10-12 and 14-19 have been amended. No new matter has been introduced. Applicants respectfully request reconsideration of the claims in light of the amendments and remarks set forth below.

**Claim Rejections**

Claims 1, 4, 9, 15 and 17-18 were rejected under 35 USC 102(b) as being anticipated by US Patent No. 5,928,139 to Koros et al. The Applicants respectfully traverse this rejection as set forth below.

In order for a reference to anticipate the present claimed invention under 35 U.S.C. 102(b), it must be shown that each and every element of the claim can be found in the reference. If it can be shown that one element of the claim is missing or not met by the cited reference, the rejection must be withdrawn as inappropriate.

Claim 1, as amended, is directed at a system for accessing a surgical target site including a handle assembly and a first retractor blade, a second retractor blade, and a third retractor blade. The handle assembly includes a first arm member, a second arm member hingedly attached to the first arm member, and a translating member adapted to move longitudinally relative the first and second arm members. The first retractor blade is rigidly coupled to the first arm member prior to introduction into the surgical target site. The second retractor blade is rigidly coupled to the second arm member prior to introduction into the surgical target site. The third retractor blade is rigidly coupled to the translating member prior to introduction into the surgical target site. The handle is configured to simultaneously introduce the first, second and third retractor blades to the surgical target site in a closed position and thereafter opened by manually squeezing the first and second arm members relative to one another to create an operative corridor to the surgical target site.

The Koros reference appears to be silent with regard to at least one element of independent claim 1 such that rejection for anticipation is improper and should be withdrawn. Among other voids, Koros appears to be completely silent regarding the claimed feature of a handle assembly having a first arm member, a second arm member hingedly attached to the first arm member, and a translating member adapted to move longitudinally relative the first and second arm members. Koros instead merely discloses a retractor frame 14, which does not share the same limitations (nor function) of the handle assembly of claim 1. Koros also appears to be silent regarding the claimed feature of rigidly coupling the first, second and third retractor blades to the handle assembly *prior to introduction into the surgical target site*. Indeed, with reference to Col. 6, lines 42-53 of Koros, the retractor blades 30 are specifically placed in the incision before the retractor frame 14 and then opened and coupled to the retractor blades 30. Lastly, Koros is silent regarding the claimed feature of simultaneously introducing the first, second and third retractor blades to the surgical target site in a closed position and thereafter opening the blades by *manually squeezing* the first and second arm members relative to one another to create an operative corridor to the surgical target site. Instead, Koros merely discloses a crank mechanism 26 that moves a movable arm 22 relative to a fixed arm 18.

Because Koros fails to teach or disclose at least one claimed feature of independent claim 1, the Applicants respectfully submit that the rejection under 35 USC 102(b) should be withdrawn in favor of an indication of allowance which is hereby respectfully requested. Claims 4 and 9, being dependent upon and further limiting independent claim 1, should be allowable for the reasons set forth in support of the allowability of claim 1, as well as the additional features they contain.

Claim 14, as amended, is directed at a method of accessing a surgical target site, comprising the steps of: (a) advancing at least one generally cylindrical dilator to establish a distraction corridor to the surgical target site; (b) thereafter advancing over said at least one generally cylindrical dilator a retractor assembly including a first retractor blade, a second retractor blade and a third retractor blade releasably coupled to a hinged handle assembly while

the first, second and third retractor blades are positioned generally adjacent to one another in a closed position; and (c) thereafter manually squeezing the hinged handle assembly to move the first, second and third retractor blades into an open position to create an operative corridor to the surgical target site.

The Koros reference appears to be silent with regard to at least one element of independent claim 14 such that rejection for anticipation is improper and should be withdrawn. Among other voids, Koros appears to be completely silent regarding the claimed step of “advancing at least one generally cylindrical dilator to the surgical target site.” Indeed, Koros merely comprises a distractor *blade* 32, which is not “generally cylindrical” in structure and does not establish a distraction corridor to the surgical target site prior to the introduction of the retractor blades, as claimed. Koros is also silent regarding the claimed feature of thereafter advancing over said at least one generally cylindrical dilator a retractor assembly including a first retractor blade, a second retractor blade and a third retractor blade releasably coupled to a hinged handle assembly, much less doing so while the retractor blades are positioned generally adjacent to one another in a closed position. As pointed out above, the retractor blades 30 of Koros are specifically placed in the incision before the retractor frame 14 and then opened and coupled to the retractor blades 30 (Col. 6, lines 42-53). Koros is also silent regarding the claimed feature of thereafter manually squeezing the hinged handle assembly to move the first, second and third retractor blades into an open position to create an operative corridor to the surgical target site. Instead, Koros merely discloses a crank mechanism 26 that moves a movable arm 22 relative to a fixed arm 18.

Because Koros fails to teach or disclose at least one claimed feature of independent claim 15, the Applicants respectfully submit that the rejection under 35 USC 102(b) should be withdrawn in favor of an indication of allowance which is hereby respectfully requested. Claims 17-19, being dependent upon and further limiting independent claim 15, should be allowable for the reasons set forth in support of the allowability of claim 15, as well as the additional features they contain.

Claims 1, 5-7, 12, 14-15 and 19 were rejected under 35 USC 102(b) as being anticipated by US Patent Publication No. 2002/0010392 to Desai. The Applicants respectfully traverse this rejection as set forth below.

Claim 1, as amended, is directed at a system for accessing a surgical target site including a handle assembly and a first retractor blade, a second retractor blade, and a third retractor blade. The handle assembly includes a first arm member, a second arm member hingedly attached to the first arm member, and a translating member adapted to move longitudinally relative the first and second arm members. The first retractor blade is rigidly coupled to the first arm member prior to introduction into the surgical target site. The second retractor blade is rigidly coupled to the second arm member prior to introduction into the surgical target site. The third retractor blade is rigidly coupled to the translating member prior to introduction into the surgical target site. The handle is configured to simultaneously introduce the first, second and third retractor blades to the surgical target site in a closed position and thereafter opened by manually squeezing the first and second arm members relative to one another to create an operative corridor to the surgical target site.

The Desai reference appears to be silent with regard to at least one element of independent claim 1 such that rejection for anticipation is improper and should be withdrawn. Among other voids, Desai appears to be completely silent regarding the claimed feature of a handle assembly having a first arm member, a second arm member hingedly attached to the first arm member, and a translating member adapted to move longitudinally relative the first and second arm members. Desai instead merely discloses an ablation catheter 70 having an expandable end, which does not share the same limitations (nor function) of the handle assembly of claim 1. Desai also appears to be silent regarding the claimed feature of rigidly coupling the first, second and third retractor blades to the handle assembly *prior to introduction into the surgical target site*. Desai is also silent regarding the claimed feature of simultaneously introducing the first, second and third retractor blades to the surgical target site in a closed position and thereafter opening the blades by *manually squeezing* the first and second arm members relative to one another to create an operative corridor to the surgical target site.

Because Desai fails to teach or disclose at least one claimed feature of independent claim 1, the Applicants respectfully submit that the rejection under 35 USC 102(b) should be withdrawn in favor of an indication of allowance which is hereby respectfully requested. Claims 4 and 9, being dependent upon and further limiting independent claim 1, should be allowable for the reasons set forth in support of the allowability of claim 1, as well as the additional features they contain.

Claim 14, as amended, is directed at a method of accessing a surgical target site, comprising the steps of: (a) advancing at least one generally cylindrical dilator to establish a distraction corridor to the surgical target site; (b) thereafter advancing over said at least one generally cylindrical dilator a retractor assembly including a first retractor blade, a second retractor blade and a third retractor blade releasably coupled to a hinged handle assembly while the first, second and third retractor blades are positioned generally adjacent to one another in a closed position; and (c) thereafter manually squeezing the hinged handle assembly to move the first, second and third retractor blades into an open position to create an operative corridor to the surgical target site.

The Desai reference appears to be silent with regard to at least one element of independent claim 14 such that rejection for anticipation is improper and should be withdrawn. Among other voids, Desai appears to be completely silent regarding the claimed step of “advancing at least one generally cylindrical dilator to create a distraction corridor to the surgical target site,” much less doing so prior to the introduction of the retractor blades, as claimed. Desai is also silent regarding the claimed feature of thereafter advancing over said at least one generally cylindrical dilator a retractor assembly including a first retractor blade, a second retractor blade and a third retractor blade releasably coupled to a *hinged handle assembly*, much less doing so while the retractor blades are positioned generally adjacent to one another in a closed position. Desai is also silent regarding the claimed feature of thereafter manually squeezing the hinged handle assembly to move the first, second and third retractor blades into an open position to create an operative corridor to the surgical target site.

Because Desai fails to teach or disclose at least one claimed feature of independent claim 15, the Applicants respectfully submit that the rejection under 35 USC 102(b) should be withdrawn in favor of an indication of allowance which is hereby respectfully requested. Claims 17-19, being dependent upon and further limiting independent claim 15, should be allowable for the reasons set forth in support of the allowability of claim 15, as well as the additional features they contain.

The remaining claims were rejected under 35 USC 103 as being obvious over Koros in view of a combination of the Weiner, Desai, Deitz, and Dabney references. As set forth above, Koros and Desai fail to teach multiple features of newly amended independent claims 1 and 15. The additional references listed above do not cure the voids in Koros and/or Desai. As such, whether taken alone or in combination, the cited art do not appear to contain any requisite teaching, suggestion or motivation that would have lead someone of ordinary skill in the art to the present invention now claimed. Allowance of all currently pending claims is hereby earnestly solicited.

#### **Supplemental IDS**

Applicants respectfully request that the Examiner review and process the Supplemental IDS submitted herewith. Should there be any fee associated with this Supplemental IDS, the Office is hereby authorized to charge such fee (or credit any overpayment) to Deposit Account No. 50-2040. If for whatever reason the Supplemental IDS will not be reviewed, Applicants respectfully request that the Examiner call the undersigned to discuss.

### Conclusion

Favorable consideration and allowance of the claims are respectfully requested. In the event that there are any questions concerning this Response to Office Action or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the remarks made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Respectfully submitted,  
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